

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-209742

DATE: May 25, 1983

MATTER OF: CMD, Inc.; DMC, Inc.

DIGEST:

1. Protest that procurement should have been advertised rather than negotiated is dismissed as untimely since the choice of procurement method was apparent from the face of the solicitation and the protest was not filed until after the contract had been awarded.
2. Whether a particular procurement should have been advertised rather than negotiated depends largely on the special facts and circumstances existing in each case and is not a significant issue under GAO Bid Protest Procedures so as to warrant consideration of the issue despite its untimely filing.
3. Since an agency is required to disclose in advance neither the details of the evaluation process nor the existence of evaluation subcriteria, there is no obligation to provide prospective offerors with copies of evaluation forms containing the subcriteria.
4. GAO has no basis to object to the use of evaluation subcriteria that reasonably relate to the stated major criteria and reflect the relative weight accorded those major criteria.
5. Where review of both the numerical scores assigned to the protesters' proposals and the written comments of the evaluators reveals that the low scores achieved by the protesters were rationally based, there is no basis for concluding that the evaluations of the protesters' proposals were arbitrary.

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CMD, Inc., doing business as Howard Johnson's Downtown, and DMC, Inc., doing business as Howard Johnson's Central, protest the award of a requirements contract to the Sheraton-Royal Hotel and Conference Center of Kansas City, Missouri, by the National Oceanic and Atmospheric Administration's National Weather Service under request for proposals (RFP) No. NA-83-WC-C-00001. The contract was for the furnishing of housing and transportation services for students attending the National Weather Service Training Center in Kansas City. The protests are dismissed in part and denied in part.

Procurement Method

The protesters contend first that the requirement should have been met through formal advertising rather than negotiation. In essence, the protesters question the agency's determination that negotiation was authorized under 41 U.S.C. § 252(c)(10) (1976) which permits the use of negotiation in procurements for which it is impracticable to secure competition. Since, however, the method by which this procurement was conducted was apparent from the face of the solicitation, any protest concerning the choice of procurement method should have been filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1983). Since this aspect of the protest was first raised after the award of the contract, it is untimely. International Business Investments, Inc., B-204429, January 6, 1982, 82-1 CPD 16.

The protesters urge us to consider this aspect of the protest under section 21.2(c) of our procedures which provides for consideration of a protest not timely filed if the protest raises significant procurement issues. They argue that consideration under this exception to our timeliness rules would be appropriate because the issue they raise is likely to recur when the requirement is resolicited next year and because the decision to negotiate rather than advertise is inconsistent with our prior decisions. This exception to our timeliness rules, however, contemplates a protest that involves a procurement principle of widespread interest or that affects a broad class of procurements. Kemp Industries, Inc., B-206653, March 19, 1982, 82-1 CPD 262. The question of whether a particular procurement may be conducted by negotiation rather than by formal advertising depends for the most part on the special facts and circumstances existing in each case. The question is not of widespread interest to

the procurement community nor does it affect a broad class of procurements. This aspect of the protest does not raise an issue that is significant within the meaning of our procedures. Kemp Industries, supra.

The protesters also seem to argue that the protest should be considered under that portion of our procedures that provides for consideration of untimely protests where "good cause" is shown. 4 C.F.R. § 21.2(c). This exception is limited to cases where some compelling reason beyond the protester's control prevents the protester from timely filing the protest. Owl Technical Associates, Inc.--Reconsideration, B-206753.2, October 29, 1982, 82-2 CPD 382. The protesters have not shown that any such reason existed here. Therefore, we dismiss this issue as untimely.

Evaluation Process

The protesters contend that the forms used in evaluating each offeror's facility were defective and that the actual evaluations of the protesters' respective facilities were arbitrary. The solicitation listed the following criteria and relative weights:

Physical Factors -- 75 Percent

- a. Physical appearance, cleanliness, decor of premises, uniformity of rooms.
- b. Recreational facilities, public spaces, meeting and commons rooms.
- c. Location of facility with respect to safety of students and their property, ease of access to transit systems and major highways to and from KCI Airport, and major shopping areas/centers open during normal off-duty hours.

Price --25 Percent

Unit price per room and per round trip transportation.

Prior to award, the contracting officer and a four-member Source Evaluation Board inspected each offeror's facility. Each Board member rated the facility using an evaluation form. The form, which was not provided to the offerors, listed subcriteria under each of the three basic criteria identified in the solicitation as Physical Factors. It was structured substantially as follows:

Physical Factors--75%

Score 0 - 5

A. Physical appearance, cleanliness, decor of premises, uniformity of rooms

Exterior building appearance
(design, grounds, parking lot,
walkways, driveways, windows,
decks or patios)

Uniformity of rooms

Guest rooms (furniture, decor,
bathroom fixtures, lighting,
television reception, heating/
cooling, water temperature and
pressure, supplies, privacy)

SUBTOTAL

(possible 15)

B. Recreational facilities, public spaces, meeting and commons rooms

Restaurant capacity, availability,
decor and cleanliness

Pool (heated, patio and furniture,
safety, size, cleanliness)

Public spaces (lobby, hallways,
elevators, registration area,
laundry area)

Meeting and commons rooms (cleanli-
ness, flexibility, equipment, main-
tenance)

Other recreational facilities (game
rooms, tennis courts, sauna, lounge,
etc.)

SUBTOTAL _____ x .6 = _____
(possible 15)

- C. Location of facility with respect to safety of students and their property, ease of access to transit systems and major highways to and from KCI Airport, and major shopping areas/centers open during normal off-duty hours

Attractive location, safety of students and their property _____

Access to transportation to KCI _____

Access to shopping, restaurants _____

SUBTOTAL _____

(possible 15)

TOTAL POINTS PHYSICAL FACTORS _____ (total possible 45)

The evaluation form provided that points were to be assigned on a scale of zero to five depending on whether a particular feature was nonexistent, poor, fair, good, very good, or excellent. The scores thus derived for Physical Factors were to be combined with those assigned for price (which had a 15 point maximum) to arrive at a total score for each offeror. The scores for both protesters and the awardee were as follows:

	Average Physical Points	Price Points	Total Points
Downtown	15.75	13.69 (\$10.50 per day)	29.44
Central	17.55	15.00 (\$8.98)	32.55
Sheraton-Royal	39.35	1.00 (\$25.00)	40.35

The evaluators ranked Downtown fifth and Central second overall.

The protesters complain that the evaluation form was not disclosed to offerors prior to the submission of offers, that it gave the same weight to the uniformity of rooms as to a combination of other guest room features and the same weight to the swimming pool as to all other recreational facilities combined, and that it provided no guidelines to the evaluators in regard to determining the

number of points to be assigned in each category. Further, the protesters object to the subcriteria "pool" and "other recreational facilities (game rooms, tennis courts, sauna, lounge, etc.)," arguing that such amenities are unnecessary and are in excess of the requirements stated in the solicitation.

The protesters also contend that the evaluations of their proposals were arbitrary. They argue that (1) the evaluation results were inconsistent with the results of the local health department inspection and the ratings given by the American Automobile Association, (2) insufficient credit was given for restaurants and recreational facilities that, while not part of the protesters' facilities, were located within walking distance, (3) undue consideration was given to the failure to display elevator inspection certificates and to the lack of on-site, coin-operated laundry facilities, (4) an on-site restaurant, described as one of the best in the country, was not evaluated at all, (5) the evaluators were critical of the lack of smoke detectors, yet failed to consider an existing contract for their installation, (6) the in-town locations of their facilities are generally more convenient than the suburban location of the Sheraton-Royal, and (7) the conclusions that the protesters' facilities are located in unsafe areas were not supported by substantial evidence. Basically, the protesters believe that their facilities are equal to or better than the Sheraton-Royal's and that after factoring in their considerably lower prices their proposals should have been rated higher than the Sheraton-Royal's.

The evaluation forms used by the Board reveal the raw scores assigned by each Board member with respect to each evaluation subcriterion and contain the written comments each member was required to make to explain ratings of "excellent," "poor," or "nonexistent." The agency states that the evaluation criteria stated in the solicitation and the subcriteria listed on the evaluation form were drafted by the contracting officer and the Director of the National Weather Service Training Center, both of whom in the past had procured housing for Center trainees and were familiar with the trainees' accommodation preferences and with the problems that can result when accommodations prove unsatisfactory. In their view, a comfortable and enjoyable living environment serves the needs not only of the trainees but also of the agency by promoting the successful completion of training assignments. Because it historically has been

the single most important recreational facility to the trainees, the swimming pool was listed as an evaluation subcriterion separate from the other recreational facilities. The agency justifies the failure to evaluate off-premises facilities by stating that in the past such facilities have been used only sparingly. Trainees generally prefer to use on-site facilities, which are usually more convenient and less expensive. In addition, any cost can often be charged to the trainee's room bill.

The agency states that Board members did not evaluate one of the protester's better restaurants because they were not directed to that facility by the protester's representative conducting the evaluation tour. In any event, given that restaurant's high average price per meal, it is unlikely that the trainees would be eating there often. The protesters' facilities scored low on laundry facilities because the evaluators believed that trainees would prefer to use readily-accessible, low-cost, coin-operated machines rather than dry cleaners or the large, industrial-type machines that the protesters planned to make available. The failures to post elevator inspection certificates and to have smoke detectors in each room were also important concerns of the evaluators. The agency notes that the contract submitted by the protesters for the installation and maintenance of smoke detectors was unexecuted and was dated more than 1 month after the Board's inspection. Further, the Board members believed that the security measures at the Sheraton were vastly superior to those in evidence at either protester's facility. Finally, an important consideration was the ease of access to shopping and restaurants. Although the protesters' facilities are located in a shopping and restaurant area, each Board member noted that walking through this area, especially at night, could be dangerous.

It is a fundamental principle of Federal procurement law that offerors must be apprised of the criteria to be employed in the evaluation of proposals and their relative weights. Price Waterhouse & Co., B-203642, February 8, 1982, 82-1 CPD 103. Although agencies are required to identify the major evaluation factors, they are not required to identify explicitly the various aspects of each factor that might be taken into account, provided that such aspects are reasonably related to or encompassed by the stated criteria, Human Resources Research Organization, B-203302, July 8, 1982, 82-2 CPD 31, and they

are not required to disclose in advance every detail of the evaluation process. See Ridgeway Electronics, Inc., B-199557, January 13, 1981, 81-1 CPD 21.

With these principles in mind, we conclude that the protesters' arguments concerning the availability and structure of the evaluation forms, and the evaluation subcriteria, are without merit. First, since the agency was required to disclose neither the details of the evaluation process nor the existence of evaluation subcriteria encompassed by the stated major criteria, we find no basis for concluding that the agency was obliged to provide prospective offerors with copies of the evaluation forms prior to the actual evaluation. Second, we have no basis to object to the agency's use of various subcriteria under criteria a. and b. identified in the solicitation as "Physical appearance" (including uniformity of rooms) and "Recreational facilities." So long as the subcriteria used are reasonably related to the evaluation criteria listed in the solicitation and reflect the relative weight accorded those listed criteria we have no basis to question the nature of or the relative weight accorded to those subcriteria during the evaluation. In our view, all of the subcriteria listed on the evaluation form satisfy this requirement. For example, game rooms, tennis courts, saunas, and lounges all clearly relate to and are encompassed by the criterion "Recreational facilities." In addition, the agency's conclusions, as evidenced in the evaluation forms, that uniformity of the guest rooms was as important as a number of other guest room features, or that the swimming pool was as important as other recreational facilities, clearly did not conflict with criteria a. and b. or the weight accorded each in the solicitation.

Concerning the protesters' arguments that their facilities were improperly evaluated, we note first that it is not the function of this Office to evaluate proposals. Energy and Resource Consultants, Inc., B-205636, September 22, 1982, 82-2 CPD 258. That function, which involves numerous subjective judgments as to the relative merits of proposals, is the responsibility of the procuring agency. We will not make independent judgments as to the numerical scores that should have been assigned. Blurton, Banks and Associates, Inc., B-206429, September 20, 1982, 82-2 CPD 238. Rather, we limit our review to an examination of whether the procuring agency's evaluation of proposals was reasonable and in accordance with the listed evaluation criteria. Id.

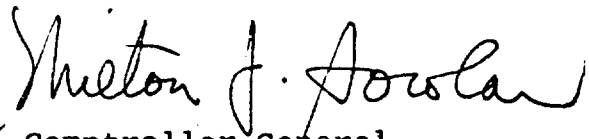
We have reviewed the evaluation forms that were completed by each member of the Board and which contained both numerical scores and the evaluators' comments. The forms indicate that both of the protesters' facilities received ratings of 1 (poor), 2 (fair), or 3 (good) on almost every evaluation subcriterion. Neither facility received a 4 (very good); Central received one score of 5 (excellent). Significantly, the scores were relatively consistent among the four evaluators.

The written comments reveal that the evaluators were concerned that both facilities had only limited on-premises recreational facilities and were located in what they perceived as comparatively high crime areas. The lack of smoke detectors and well-trained security forces led to further concern among the evaluators for the safety of the students. Some evaluators commented that Central's common areas were dirty and cluttered with worn furniture, and that its laundry facilities were unacceptable. The most frequent criticism of the Downtown facility was that its kitchen was dirty. These and other comments of the evaluators were within the discretion afforded them in their role as evaluators, and fully justify the scores received by both facilities. That the protesters' facilities may have received more favorable ratings from either the local health department or an independent rating service does not compel a different conclusion. We find no basis for concluding that the overall evaluations of the protesters' facilities were arbitrary or were otherwise inconsistent with the stated evaluation criteria. This aspect of the protest is denied.

Warranty

Finally, the protesters initially contended that the contract awarded to the Sheraton-Royal did not contain a covenant against contingent fees as required by 41 U.S.C. § 254(a) (1976). The protesters did not pursue this argument, however, and in fact both the solicitation and the contract do contain the required covenant.

The protest is dismissed in part and denied in part.

for 
Comptroller General
of the United States